



Eidgenössische Technische Hochschule Zürich
Swiss Federal Institute of Technology Zurich

Curbing Illicit Financial Flows from Resource-rich Developing Countries: Improving Natural Resource Governance to Finance the SDGs

Commodity Trade Mispricing: Mapping Regulatory Drivers, Enablers and Responses January, 2019

Irene Musselli

Centre for Development and Environment (CDE) University of Bern

Elisabeth Bürgi Bonanomi

Centre for Development and Environment (CDE) University of Bern

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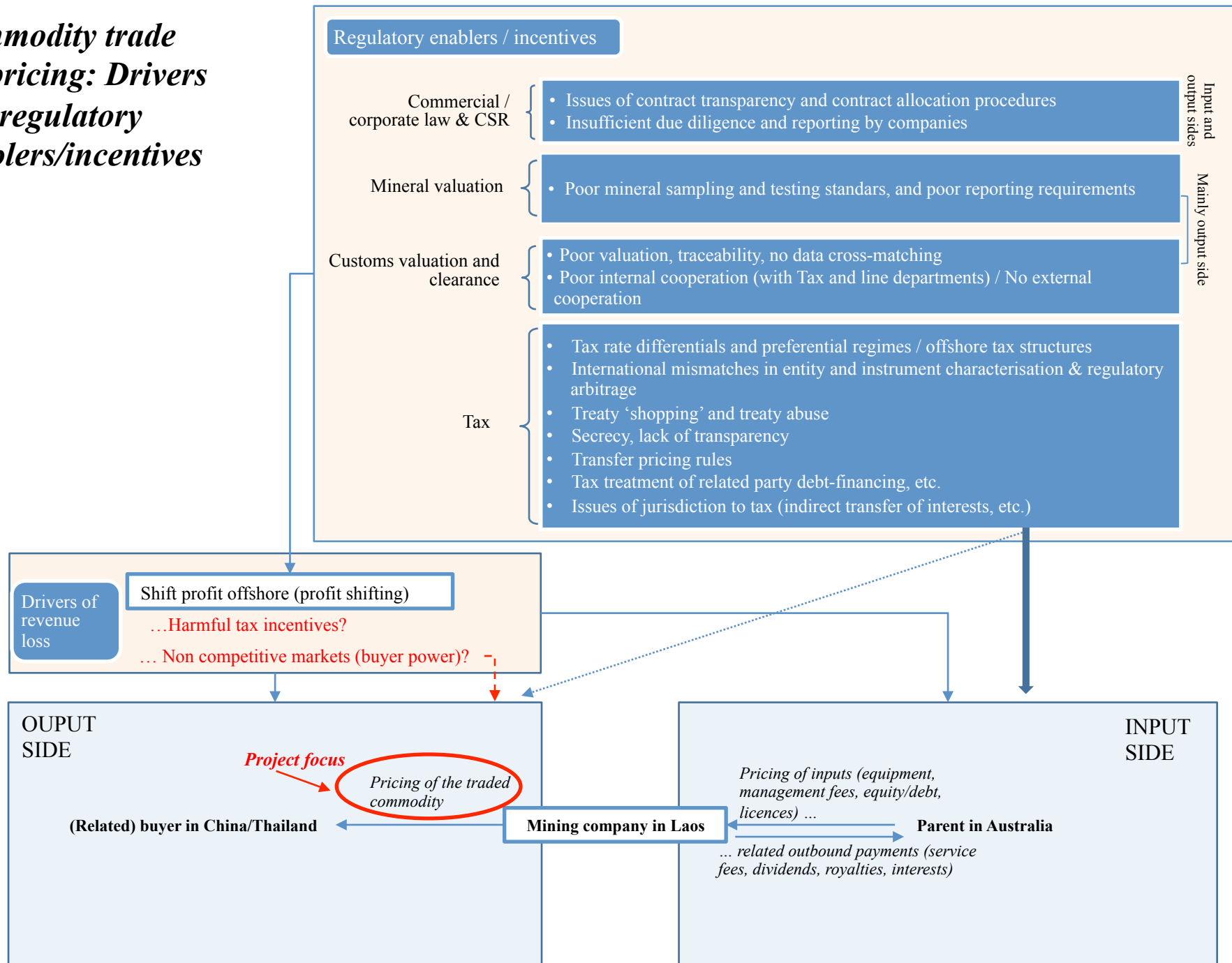
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Commodity trade mispricing: Drivers and regulatory enablers/incentives



Commodity trade mispricing: Regulatory enablers/incentives and regulatory responses

TAX

- Tax rate differentials and preferential regimes / offshore tax structures ← Changes to the international tax architecture / alternative framework (minimum taxes, formula apportionment, etc.)
- International mismatches in entity and instrument characterisation & regulatory arbitrage ← Anti-hybrid rules
- Treaty 'shopping' and treaty abuse ← Limitation of benefits (LOB) rules and other anti-treaty abuse rules
- Secrecy, lack of transparency ← Exchange of information and cooperation in tax matters
- Transfer pricing rules ← Simplified TP mechanisms and alternative approaches (formulary apportionment, etc.)
- Tax treatment of related party debt-financing, captive insurance, etc. ← Restrictions on interest deductibility (thin capitalization and other rules)
- Issues of jurisdiction to tax (indirect transfer of interests, etc.) ← Strengthened source country taxing rights

CUSTOMS

- Poor valuation and clearance procedures (valuation, traceability, data cross-matching) ← Reference databases, traceability systems and data cross-matching (rules and regulations)
- No internal cooperation (tax department, mines/line ministries) ← Internal administrative assistance (protocols and procedures)
- No external cooperation ← Customs cooperation agreements

MINERAL VALUATION

- Poor mineral sampling and testing standards, and poor reporting requirements ← Strengthened mineral valuation frameworks and procedures

COMMERCIAL / CORPORATE

- Issues of contract transparency and contract allocation procedures ← Contract registration, traceability systems, inter-locked paper trials / technologies (block chain?), auctions
- Insufficient due diligence and reporting by companies ← 'Incentivize' traders' due diligence and reporting by leveraging trade facilitation, exchanges, finance/investors, etc.

Cooperation frameworks

Switzerland

- Trade intelligence and transparency
- Internal administrative assistance (bank supervisors, AML units, tax authorities, law enforcement)
- Customs valuation

- Bribery of foreign officials and private persons in international business transactions

- Tax crime as a predicate offense of AML
- Financial intermediaries due diligence and disclosure requirements
- Extension of AMN regulations to designated non-financial businesses and professions, including traders
- Suspicious activity reporting system, internal administrative assistance (customs, tax authorities, banking supervisors)

- Country-by-country (CbC) reporting & transfer pricing (TP) documentation
- Obligation to disclose payments to governments
- Identification of the beneficial owners of legal entities
- Transparency regarding legal entities, including companies with bearer shares

Elimination of potentially harmful tax practices:

- Preferential tax incentives for license income with no substantial activity
- Preferential tax treatment of holding, domiciliary (auxiliary) and mixed companies at cantonal level
- “Commissionaire” ruling regime

Anti-money laundering (AML) law

Disclosure / accounting rules

Corporate governance and directors' duties

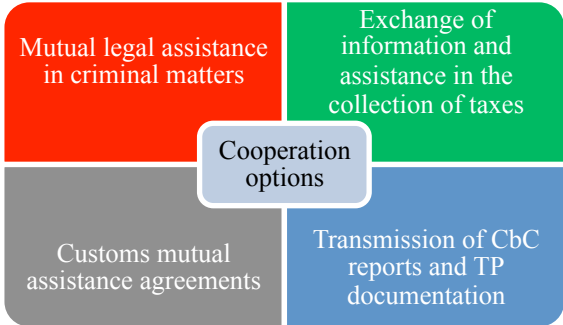
Corporate tax law

Customs and trade transparency

Anti-corruption/ bribery law

Levers, international

- Trade provisions, including trade facilitation (Authorized Economic Operator status etc.)
- Investment treaties/contracts (Denial-of-benefits clauses, etc.)
- Business and Human Rights (and environment)



Ghana and Laos

Pre-shipment inspection and valuation; customs enforcement and trade transparency

Anticorruption laws & AML legislation

Internal administrative assistance (tax authorities, customs agencies, law enforcement, banking supervisors/FIUs, etc.)

Transfer pricing rules, procedures and documentation

Other anti-abuse rules

Corporate disclosure requirements and transparency

Tax provisions (general tax law, mining law, mining contracts)

Investment regulation (institutional set up, concessions/licences, operations)

- Criminal law issues (Switzerland: SCC, AMLA & Ordinances, ACLA)
- Company law issues (Switzerland: CC, CO, CISA, FAIS)
- Tax law issues
- Customs laws, regulations and procedures